IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. _____

J. T. WILLIAMS
Petitioner

vs

UNITED STATES OF AMERICA
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The petition of J. T. Williams respectfully prays that a Writ of Certiorari issue to review the decision of the Fifth Circuit, United States Circuit Court of Appeals, rendered the 22nd day of October 1948.

The decision sought to be reviewed is as follows:

"SIBLEY, Circuit Judge: The information in eighteen

counts charged appellant, John T. Williams, with various violations of ration orders. On the first trial he was found guilty on counts 1 to 8 inclusive, and counts 10 and 18; and not guilty on the others. He paid fines on counts 10 and 18, but appealed as to counts 1 to 8 inclusive. For the sole reason that a bill of particulars which was asked for ought to have been given, this court reversed the case for further proceedings. **Williams vs. United States** 164 Fed. (2) 302. On the second trial the bill of particulars was furnished, a motion to dismiss was again made by Williams, and overruled; a plea of former jeopardy and **res adjudicata,** was made by him and overruled; certain evidence was admitted over his objection; and certain requests to charge denied; a motion for instructed verdict of acquittal was denied; and the jury having found guilt on counts 1, 2 and 3 only, a motion in arrest of judgment was made and denied. On the present appeal, error is specified on each of these rulings.

1. The so-called motion to dismiss treated the bill of particulars as an amendment of the information reopening it to attack, although this court on the former trial had held there was no error in overruling the motion to dismiss the information. The information was not amended and its sufficiency was settled. We treat the present motion as an objection to the sufficiency of the bill of particulars. We find the bill a full statement of the information asked for so far as the prosecution could give it. The ration orders and regulations relied on were set out in full, and the details of the transaction in each count given, and the record of the evidence in the former trial was exhibited to show the full evidence relied on. As to each of the the counts, 1, 2 and 3 it is stated that the

United States Attorney does not have information as to how the defendant acquired the sugar ration stamps involved, but he believes that information is possessed by the defendant. Necessarily the defendant knew better than anyone else how he got them. The information alleged in each of these counts that the stamps had not been issued to and acquired by him in accordance with a ration order, and that was all that had to be proved to sustain the charge that his possession and use of them was unlawful. The bill of particulars was sufficient.

2. The pleas of former jeopardy and **res adjudicata** are based on the acquittal in the former trial under count 9 which charged generally that between Jan. 15, 1946, and the end of March, 1947, at Cordele, Georgia, the defendant had received about 1.000,000 pounds of sugar, a rationed commodity, in exchange for sugar ration stamps which he knew and had reason to believe were not acquired by him in accordance with a ration order. Counts 1, 2 and 3, with which alone we are now concerned by reason of his acquittal on all other counts, charged respectively the unlawful acquisition and use and transfer of 911 sugar ration stamps at Cordele, Georgia, on or about April 14, 1947, and of 1730 such stamps on or about April 7, 1947, and 800 such stamps on or about May 5, 1947, in each instance "which aforesaid ration documents had not been issued to and acquired by said defendant John T. Williams in accordance with a ration order". The acquisition of sugar is not mentioned. Count 9 was based on Section 2 8 of the General Ration Order 8 as amended, 8 F. R. 3783, which forbids the acquisition or transfer of a rationed commodity except in accordance with a ration order. Counts 1, 2 and 3 are based on Section 2.6 of General

Ration Order 8 as amended, 8 F. R. 9626, which forbids the acquisition or possession or use of a ration document except by the person or his agent to whom it was issued or except as otherwise provided by a ration order. These are distinct offenses, one relating to rationed commodities, and the other to ration documents. Different proof is needed. Conviction or acquittal of one is no bar to a prosecution for the other, even though in the same transaction both sections were violated. **Gavieres vs. United States,** 220 U. S. 338, 342. Acquittal under count 9, if dates be disregarded as it is argued they should be, might be an adjudication that a million pounds of rationed sugar or any part thereof were not acquired unlawfully within the period of limitation, but it would not establish that Williams on the dates alleged did not have and use sugar stamps which he had no right to have.

As to a second jeopardy, he was of course put to trial twice on counts 1, 2 and 3, but at his own instance and request by his taking the first appeal. That is no violation of the constitutional provision against double jeopardy for the same offense.

3. Evidence was admitted that Williams stated to the officers that he was in the soft drink bottling business and all the sugar he purchased was on sugar checks and he had no business with sugar stamps; that he neither owned nor was connected with a grocery store, and the only stamps he had were his wife's at home, and he had never used any stamps; and he made no explanation about the 911 or 1730 or other sugar stamps. The only objection made to this evidence was that the pleadings did not authorize it. The objection was not good. There

was positive evidence that Williams had and used the 911 and 1730 and 800 sugar stamps as charged in counts 1, 2 and 3, and the question was, Did he acquire and possess them in accordance with a ration order? His statement that all he ever had were those his wife had at home and he never used any, had a direct bearing on that question. If the jury disbelieved his denial that he had all the stamps testified to, and concluded he had and used them, they could reason that they were not stamps issued for his domestic use, since they represented tons of sugar, and his failure to explain how he came by them showed he had no innocent explanation. The evidence was relevant and bore on the charge in the information.

4. A charge was requested and refused that evidence obtained by the "entrapment of a witness" was to be disregarded, and "in order for the witness to be entrapped some person must conspire with the witness in order to get the party against whom he or they are testifying to commit a crime for the purpose of obtaining the testimony". The entrapment of the accused by an officer witness was apparently meant, for it is argued that it occurred here because the dealer who was furnishing sugar to Williams permitted the officers to hide in his store where they could see the transactions to which they testified. The officers had no part at all in what Williams did; they simply spied on him, he not knowing they were present. There was no cause to reject their testimony as to what they saw, and no entrapment of Williams.

A further request which was refused was that the mere possession of a rationed commodity would not of itself be illegal nor would the mere possession of ration

documents unless said documents were acquired illegally and the rationed commodity was acquired under such illegal document, the burden being on the Government to establish these facts. From what has been said above about the separateness of the offenses here involved, this requested charge if given would have wrongly confused them and made them interdependent and was correctly refused. The charge given properly treated them separately. As to counts 1, 2 and 3 it said, "Of course mere possession of a stamp would not be a crime, but it is the unlawful possession of it without right or authority in law as authorized by the regulation". The usual charge was given also as to the burden being on the Government to satisfy of guilt beyond a reasonable doubt. There was no error.

5. As to the motion for verdict of acquittal, the evidence showed directly the possession and use of the large amounts of ration stamps alleged, and the stamps themselves were in evidence. It was proven that Williams was not in a business in which he could have stamps issued to him, for his allotment of sugar was withdrawn on checks as provided by the regulations, and the amount of the stamps showed they were not for his domestic use. He was not by his own admission a groceryman who would be authorized to receive such stamps in selling sugar at retail, nor connected with any such business. He made no explanation when asked about them, but resorted, as the jury might believe, to a false denial that he had them. On the trial, though necessarily knowing how he got them, he again offered no explanatory evidence. All this would justify the conclusion that he did not acquire them in accordance with any ration order. In criminal as in other

cases where the party having the burden makes a probable case on an issue as to which the accused has peculiar knowledge of the facts and may easily prove them and the prosecution cannot, an inference arises that the truth is with the prosecution. Familiar instances are where one is charged with carrying on a business without a license or giving bond the accused must meet circumstances showing a probability by proof which he can easily make that he has a license or has given bond; **Rossi vs. United States,** 289 U. S. 89; .or has paid the proper tax, **Faraone vs United States,** 259 Fed. 507; or has registered and paid tax for dealing in narcotics, **Taylor vs. United States,** 19 Fed. (2) 813, 816. So where one has possession of recently stolen goods and makes no satisfactory explanation of his possession he may be considered the thief. See generally 22 C. J. S. Criminal Law, Par. 571, 572, and cases cited. A case was made for consideration by the jury.

6. A motion in arrest of judgment because no offense is charged is authorized by Rules of Criminal Procedure 12(b)(2) and 34, but subject to the provisions of Rule 52(a) on the subject of harmless error on review. Such a motion was made by Williams and overruled, his reliance being on a failure in counts 1, 2 and 3 to negative exceptions referred to in the enacting clause of Section 2.6 of Ration Order 8. According to **Sutton vs. United States,** 157 Fed. (2) 669, exceptions so made in such orders ought to be negatived. In Section 2.6 every person is forbidden to acquire, possess or use a ration stamp "except the person or the agent of the person to whom such ration document was issued, or except as otherwise provided by a ration order". These counts allege Williams

unlawfully acquired, used, and possed ration documents, being a stated number of sugar ration stamps, "which had not been issued to and acquired by him in accordance with a ration order". Perhaps strict pleading would have required a special allegation that he was not the agent of the person to whom they were issued, but the general allegation made really covers all cases in which acquisition could have been authorized by any ration order and includes the case of an agent. The omission, after verdict in a trial where Williams had full opportunity to show he was such agent and made no such claim, and no circumstance showed he was an agent, does not cause error in the trial court in refusing to arrest judgment, and if error it is not such error as should cause reversal in this court, since no substantial right of Williams was affected.

No reversible error appearing, the judgment is

AFFIRMED".

A True copy:
Teste:

Clerk of the United States Court of
Appeals for the Fifth Circuit.

JURISDICTION.

The Court has jurisdiction to review said decision under Section 240 (a) of the Judicial Code (28 USC Section 347)

The case arises because the Circuit Court of Appeals has made a decision contrary to the decision of the Supreme Court in the case of:

SEALFON VS. UNITED STATES OF AMERICA,

332 U. S. 575

The decision is contrary to the former decision of the Circuit Court of Appeals in:

GRIMSLEY VS UNITED STATES, 50 F 2d. 509-512
SUTTON VS. UNITED STATES 157 Fed. 669

In the said cases it was held that any denial of a right to a person which was guaranteed under the Sixth Amendment of the Constitution of the United States is a substantial right and Section 391 to the effect that technical defect should be disregarded which is in the 28th Volume Annotated Code, and also referred to in Rule 52 (a) of the Rules of Criminal Procedure in the Circuit Court of Appeals and the principles involved are expressed in the Sutton case referred to above and in the Grimsley case.

In the dissenting opinion in the Grimsley case it was said that the entire record could be reconsidered by the Appellate Court, but the majority opinion of the Court was to the effect that there must be a good information and evidence to support it, in order to sustain a conviction. It was also pointed out in that case that constitutional rights were different from other rights and that the Supreme Court was bound by the Constitution.

The 8th Ration Order went into effect in March 1943 and prescribed certain penalties, to-wit: Fine not to exceed $5000.00 on each count, and/or imprisonment for one year.

The 3rd Revised Ration Order went into effect

January 1, 1946 and prescribed penalties for its violation which were the suspension of the right to receive sugar. It is our contention that the 3rd Revised Ration Order superseded Ration Order No. 8.

Appellant contends that his pleas of former jeopardy and res judicata are good. He was convicted on Counts One, Two and Three, in which he was charged with the illegal possession of ration documents and the use of them to buy sugar which counts are as follows:

"COUNT ONE: Second 2.6 General Ration Order 8, as Amended, of the Office of Price Administration, 8 FR 9626.

The United States Attorney charges:

On or about the 14th day of April 1947, at Cordele, Georgia in the Americus Division of the Middle District of Georgia, the defendant John T. Williams, alias J. T. Williams, alias Buck Williams, knowingly, willfully and unlawfully did then and there acquire, use, permit the use of, transfer, possess and control divers and sundry ration documents, to-wit: about 911 sugar ration stamps, which aforesaid ration documents had not been issued to and acquired by the said defendant John T. Williams, in accordance with a ration order."

The other two counts, that is Two (2) and Three (3) are identical with Count One (1) except as to dates and the amount of sugar stamps involved.

In Count Nine the defendant was charged with receiving one million pounds of sugar by the use of illegal ration documents, which count is as follows:

"COUNT NINE. Section 2.9, General Ration Order 8, as amended, of the Office of Price Administration, 8 FR 3783.

The United States Attorney further charges: During the period from about January 15, 1946, to and including the month of March 1947, at Cordele, Georgia, in the Americus Division of the Middle District of Georgia, the defendant John T. Williams, alias J. T. Williams, alias Buck Williams, did then and there knowingly, willfully and unlawfully receive sugar a rationed commodity, in the amount of about 1,000,000 pounds, in exchange for various and sundry ration documents, namely sugar ration stamps, which he, the aforesaid defendant, then and there knew and had reason to believe were not acquired by him in accordance with the provisions of a ration order."

There can be no rational distinction between using illegal documents to buy sugar and receiving sugar by the use of illegal documents.

STATEMENT OF THE CASE

This case was tried in the District Court of the United States for the Middle District of Georgia, Americus Division, first in June 1947 and was carried to the Circuit Court of Appeals for the Fifth Circuit and was reversed and was re-tried in January 1948. The defendant was convicted on the first three counts in the information which charged him with the possession of sugar stamps which had not been legally issued to him under the provisions of the 3rd Revised Ration Order. He was charged with the of these stamps. At the latter trial of this case the defendant filed a motion to dismiss which was practically a repetition of the motion that he had made to dismiss in the first trial and in addition he made the point that the attempted amendments were not a response to the motion for a bill of particulars which had been granted by the Court. The Court overruled this motion on the ground that a response to the bill of particulars

was not a part of the pleadings. The defendant cited the case of:

UNIVERSAL OIL PRODUCTS CO. VS. SHELLY OIL CO.

12 F 2d. page 271

The defendant contended that a response to a motion for a bill of particulars was an amplification of and an amendment to the information. The defendant filed his plea for former jeopardy and res judicata. Both of these pleas were based on defendant's contention that the offenses mentioned in Counts One (1) Two (2) and Three (3) were covered by Count Nine (9) on which he had been acquitted. The attention of the Court is called to the fact that while he had been convicted on ten counts in the first trial he was convicted on only three in the second trial which were Counts 1, 2, and 3 just referred to as will be seen by the authorities which we have referred to.

We think in the first place that the Grimsley case which has been cited and the Sutton case which follows the principles laid down in the Grimsley case are controlling in the case at bar, because the rights involved are constitutional rights and Section 391 as embraced in Volume 28 of the U. S. Annotated Code and Rules of Criminal Procedure in the Circuit Court 52(a) are not applicable. The principles laid down in that statute and that rule relate to statutory offenses and not to the violation of rights under the Constitution.

The information was not sufficient under the Sixth Amendment of the Constitution of the United States, which requires that the nature and cause of the offense

shall be set out and also rules what that means. That the alleged charge should be set out so clearly that the defendant will understand what he is charged with. Also the fact should be stated so clearly that he would not be taken by surprise at the trial and also that they should be so definite and certain as that the defendant would be able to avail himself of the former plea of jeopardy.

An examination of Counts 1, 2, and 3 of the Information will show they are included in Count Nine. We think that the plea of former jeopardy would cover these cases because the issues and the proof are identical but certainly under the Sealfon case supra the plea of res judicata certainly should have been sustained. In the Sealfon case it was recited that though the offenses were different, if the issues were identical that the plea would be good. Our case is much stronger than that because the offenses are not different and the evidence is identical.

The case cited by The Government:

GAVIERES VS. U. S. 220 U. S. 338

which came up from the Philippine Islands is not applicable in this case, because the offenses were triable in different tribunals with different jurisdictions. That was a case where a person was charged with being drunk under a Municipal Ordinance and insulting a public officer which was a criminal offense which was triable in what was designated in the opinion of the Court as a Court of first instance which probably corresponds to our Circuit Court and Superior Court. The case upon examination will be shown to be entirely different from this case. The District Court in the case at bar had jurisdiction of

all the offenses charged in the information. The two offenses charged in the Philippine Island case related to two courts having different jurisdictions.

WHEREFORE petitioner prays that a Writ of Certiorari may be issued by this Court.

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